

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**LISA J. (GASTON) PARKS**

Claimant

VS.

**AUTOMOTIVE CONTROLS CORPORATION,  
n/k/a DANA ENGINE CONTROLS**

Respondent,  
Self-Insured

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Docket No. 233,786

**ORDER**

Respondent appealed the November 9, 2000 penalties Order entered by Administrative Law Judge Jon L. Frobish.

**ISSUES**

After conducting a hearing in which the parties agreed that respondent had paid claimant temporary total disability benefits late, the Judge assessed a \$200 penalty against respondent.

Respondent contends the Judge erred. In its brief to the Board, respondent argues that (1) the temporary total disability benefit payment was less than two weeks late and (2) assessing penalties for more than one week “is akin to pyramiding penalties and is not contemplated by the Statute.”

Although claimant prepared a letter to the Board in this appeal, that letter does not state claimant’s position on the penalties issue but merely refers the Board to some of its earlier decisions that allegedly address the method of calculating penalties under K.S.A. 44-512a.

The only issue before the Board on this appeal is whether the Judge erred by assessing a \$200 penalty against respondent for failing to pay temporary total disability benefits in a timely manner.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. After reviewing the record compiled to date and considering the parties' arguments, the Board finds that the penalties Order should be affirmed.

2. At the November 8, 2000 penalties hearing, the parties agreed that on September 14 [sic], 2000, respondent had been ordered to pay temporary total disability benefits for the period commencing March 31, 2000, forward.

3. At the penalties hearing, the parties also represented that claimant had demanded payment of the temporary total disability benefits awarded in the preliminary hearing Order and that respondent failed to pay those benefits within 20 days following the written demand.

4. The Workers Compensation Act provides that a worker is entitled to receive a civil penalty when compensation is not paid when due. The worker must serve written demand upon the employer and its insurance carrier that specifically identifies the disability compensation or medical bill that is claimed to be unpaid. But the employer and its insurance carrier can avoid the civil penalty by paying the compensation within 20 days after receiving the written demand. The penalty statute provides, in part:

(a) In the event any compensation, including medical compensation, which has been awarded under the workers compensation act, is not paid when due to the person, firm or corporation entitled thereto, the **employee shall be entitled** to a civil penalty, to be set by the administrative law judge and assessed against the employer or insurance carrier liable for such compensation in an amount of **not more than \$100 per week for each week any disability compensation is past due and in an amount for each past due medical bill equal to the larger of either the sum of \$25 or the sum equal to 10% of the amount which is past due on the medical bill, if: (1) Service of written demand for payment, setting forth with particularity** the items of disability and medical compensation claimed to be unpaid and past due, has been made personally or by registered mail on the employer or insurance carrier liable for such compensation and its attorney of record; **and (2) payment of such demand is thereafter refused or is not made within 20 days from the date of service of such demand.**<sup>1</sup> (Emphasis added.)

5. The parties represent that the 20-day period following demand for payment expired on October 9, 2000, and that claimant received a lump sum payment on October 26, 2000.

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<sup>1</sup> K.S.A. 44-512a.

6. The Board concludes that claimant was entitled to receive temporary total disability benefits for the period commencing March 31, 2000, and that respondent failed to pay those temporary total disability benefits within 20 days following receipt of the written demand for payment. The Board concludes that respondent's payment was at least two weeks late and, therefore, the Judge did not err by assessing penalties against respondent in the sum of \$200.

The respondent's argument that assessing penalties for more than one week amounts to pyramiding penalties is without merit. The penalties statute specifically provides that a penalty may be assessed for each week any disability compensation is past due.

**WHEREFORE**, the Board affirms the November 9, 2000 penalties Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS  
Stephen J. Jones, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director